

Phillips Fibers Corporation and Oil, Chemical and Atomic Workers International Union, AFL-CIO. Cases 11-CA-13922 and 11-CA-14105

April 20, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On December 31, 1991, Administrative Law Judge Stephen J. Gross issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings, and conclusions and to adopt the judge's recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Phillips Fibers Corporation, Seneca, South Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

¹ The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Rosetta B. Lane, Esq., for the General Counsel.
Leonard J. Spooner, Esq. (Thompson, Mann & Hutson), of Greenville, South Carolina, for the Respondent.
Judith Helton, of Knoxville, Tennessee, for the Charging Party.

DECISION

STEPHEN J. GROSS, Administrative Law Judge. The Respondent, Phillips Fibers Corporation (Phillips), operates a factory in Seneca, South Carolina. The General Counsel claims that during the period July 2 through September 19, 1990, Phillips, at that factory: (1) promulgated and maintained rules restricting employee activity because of the union activities of some of the employees; (2) discriminatorily enforced a no-solicitation, no-distribution rule; and (3) fired two employees because of their union activities. (All events to which this decision refers occurred in 1990 unless otherwise specified.) Phillips denies that it violated the National Labor Relations Act (the Act) in any respect.

My conclusion is that Phillips did violate Section 8(a)(1) of the Act by applying one of its rules in discriminatory fashion; but that otherwise Phillips did not violate the Act.

Jurisdictional Matters

The Charging Party, Oil, Chemical and Atomic Workers International Union, AFL-CIO (the Union) filed its charge in Case 11-CA-13922 on July 13. It filed its charge in Case 11-CA-14105 on October 29 and then amended it on November 15.¹

According to the complaint, during the past 12 months, which period is claimed to be representative of all times material, Phillips received at its Seneca, South Carolina facility products valued in excess of \$50,000 directly from points outside the State of South Carolina; and Phillips shipped from its Seneca, South Carolina facility products valued in excess of \$50,000 directly to points outside the State of South Carolina.

Accordingly, the General Counsel alleges that Phillips is now and has been at all times material an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. No evidence was adduced in support of these allegations. But Phillips admits the complaint's allegations in these respects.

The General Counsel also alleges that the Union is a labor organization within the meaning of Section 2(5) of the Act, and I find that the Union is in fact a labor organization.

Foreman Covington's Statements on July 2

The General Counsel claims that Phillips violated the Act on five different occasions. I am going to discuss the five in chronological order.

The first acts by Phillips said to have violated the Act occurred on July 2. The complaint alleges that on that date Phillips, by Supervisor Joyce Covington, "promulgated and maintained a rule restricting its employees from leaving their work area because of their union activities."

Phillips' Seneca factory makes nonwoven fabric. We are primarily concerned with one part of that factory—the "rework" department. In size it is about 300 feet by 450 feet. It is filled, more or less, with machinery, some of which is highly automated, so that there are only 16 or 17 employees per shift in the rework department.

The largest, and most important, equipment in the rework area are two "Fare" machines (pronounced "fah ray"). The Fare machines are huge, automated, machines that run constantly, 24 hours per day (except for breakdowns). It is the task of the Fare machines' operators, two per machine, to constantly monitor the machines' operations and to instantly remedy the various minor glitches that arise from time to

¹ The complaint in Case 11-CA-13922 issued on August 31. An order consolidating cases and a consolidated complaint (the complaint) issued on November 30. I held a hearing in the matter in Seneca, South Carolina, on December 13 and 14, 1990, and February 4, 5, and 6, 1991.

² Here, and throughout this decision, I am simply going to relate what I believe occurred, based on my credibility resolutions and my reading of the documentary evidence. I am not going to discuss the testimony of individual witnesses (with minor exception). As my fact findings will indicate, I generally found the testimony of Phillips' supervisors considerably more credible than the testimony of the employees who considered themselves discriminatorily treated.

time. Any operator's failure to do that can result in significant costs for Phillips.

As in most factories, the employees in Phillips' plant are not free to wander about at their whim. They are expected to remain attentive to their tasks except when they are on their allotted breaks (at which time their "break reliefs"—other employees that Phillips designates for that role—fill in for them). There are two exceptions. Employees may briefly leave their machines without specific supervisory permission (1) to go to the bathroom or (2) to get coffee or a cold drink. (For Fare operators, one of the other three operators monitors the absent operator's area of responsibility for those minutes he or she is away.)

As is also true in most factories, for obvious reasons employees on their breaks are not supposed to enter into conversations with employees who are at work.³

And again as is true in most factories, from time to time supervisors crack down on rule violations, such as the rule regarding leaving one's work station, then let things slide, then once again crack down.

In 1990 Joyce Covington was the daytime foreman in the rework department. Michael Hughes, a "shift supervisor," was her immediate supervisor. Both Covington and Hughes are "supervisors" within the meaning of the Act. (Hughes' responsibilities included both the rework department and the "Duon" department—that is, the two manufacturing departments in the factory.) On or shortly before July 2 the person in charge of the plant's supply room complained to Covington that one of the rework employees had been visiting a supply room employee when the latter employee was not on his break. Covington told Hughes about the complaint. About the same time the plant's maintenance foreman complained to Hughes that some of the rework and Duon employees "were spending too much time" in the maintenance department.

Hughes' response was to tell Covington and the Duon foreman "to go to each individual employee and tell them where our problem was and that we needed to put a stop to it" (in Hughes' words).

Covington did just that. On July 2 she spoke individually to each of the 17 or so employees she supervised. She told them that they were to take their breaks in the designated break areas, not in other work areas; and that they were to go directly to and return directly from the break areas without visiting employees in other areas.

Five or six of the rework employees had held their first union organizational meeting less than 2 weeks earlier, on June 20. Not surprisingly, they immediately jumped to the conclusion that Covington's one-on-one talks were aimed at impairing unionization efforts (even though Covington remarks to the employees in no way had suggested that her concern had anything to do with any union). The General Counsel here makes that same contention.

I conclude that the General Counsel has failed to show that to be so.

³The record contains no evidence about work rules in factories other than Phillips' Seneca plant. My statements about other facilities are based on my experience in such matters. I note that even were I not aware of the similarity between Phillips' rules and those in other factories, I would reach the same outcome here.

First, there has been no showing that as of July 2 anyone in management was aware of any unionization effort.⁴

Second, even if the General Counsel had proven that, as of July 2, management was aware of the unionization effort, I would still conclude that the General Counsel's allegation about the discriminatory promulgation of a rule on July 2 was incorrect. Hughes and Covington responded in a commonplace way to a commonplace problem. Moreover Covington was evenhanded in the way she spoke to employees about the matter and the way she thereafter enforced the rule.⁵

Phillips' Discharges of Peggy Smith and Stan D. Smith

During the relevant time period four Smiths worked in the rework department: Karen, Peggy, Stan D., and Stan P. Our concern in this part of the decision is with Stan D. and Peggy Smith. (Actually, as of July 1990 Peggy's last name was Cobb, not Smith. But prior to the hearing she married Stan D.) Phillips fired Peggy and Stan on July 3. The question is whether Phillips fired them because of their union activities.

July 3, start to finish, was a really lousy day for Peggy.

Things began to go sour in the morning. Peggy was about to complete her divorce from her husband. In the meantime she had entered into a relationship with Stan D. She and Stan wanted to take a short vacation together, one that required them to be away from the plant for 2 working days. But Phillips' policy is to limit vacations so that no more than three employees in the combined rework-Duon areas are on vacation at the same time, and so that no more than two rework employees are on vacation at the same time. (Phillips grants exceptions to this policy, but only rarely.)

The vacation listing showed that two employees, Dale Cain and Mickey Owens, would be on vacation on the days that Peggy and Stan wanted for their vacation. One of those employees, Owens, was in the rework department. (That meant that either Peggy or Stan could take a vacation then, but not both of them. And, of course, the point was for Peggy and Stan to take the vacation together.) But Covington (the rework foreman) told Peggy and Stan that their vacation remained a possibility. Cain (the nonrework employee), Covington said, had advised that he was thinking about not taking those days off after all.

Covington's holding out the possibility of a holiday was a mistake. Owens, after all, was in the rework department, he definitely was going to be off on the days in question, and Phillips did have a policy of only allowing two rework employees off at a time.

⁴I specifically find that an alleged incident in the plant's parking lot, in which Covington supposedly walked past a group of employees shouting "union, union," never occurred.

⁵The record includes certain employee personnel records for 1988, 1989, and 1990. Those records show that in 1990 Phillips' supervisors substantially increased the number of entries (records of verbal discipline) they made in those personnel records about employees leaving their work areas. But more than half of the 1990 entries were made before any union organizing began. The General Counsel claims, nonetheless, that three prounion employees were unfairly treated in that respect by Covington after the union organizing began, and that this is evidence of antiunion behavior on Phillips' part. But my reading of the employee records in question shows there to be nothing suspicious about Covington's actions.

Shortly after Peggy and Stan talked to Covington about their vacation desires, Covington learned that Cain was not going to be going on vacation. Covington spoke to Hughes (her immediate superior) about Peggy and Stan, mentioning that Cain had changed his plans and was not going to be off; thus only Owens would be away. Hughes responded that that did not matter; since Owens was going to be off, Peggy and Stan could not both take a vacation then.

In the meantime, Peggy left for a hearing in her divorce case. The hearing, which only took an hour or two, did not go well for her. She returned to the plant devastated.

Things for Peggy then got even worse. The hearing had resulted in the divorce being made final. That meant a change in her status, which in turn required that Peggy make changes in things like the insurance coverage provided by Phillips. One of the Company's administrative employees told Peggy that the Company needed information that Peggy had to call her ex-husband to get. She did call him to get the information. As one might guess, the conversation was a difficult one. Peggy got even more distraught.

Peggy's telephone conversation with her ex-husband ended not long before 7 p.m. (Phillips' employees work 12-hour shifts, 8 a.m. to 8 p.m.) At or about 7, perhaps 6:45, Covington began distributing paychecks. She walked over to the Fare area. Peggy, Stan, and several other employees were there.

When Covington turned to Peggy, Peggy asked about her vacation request. Predictably, things did not go smoothly. Covington said that Peggy and Stan could not both be off on the days that the two of them had requested. Peggy responded angrily, saying something on the order of "why the hell not? Dale Cain isn't going on vacation." Covington replied that Hughes had told Covington that he would not allow three rework employees to be off at the same time. Peggy launched into a tirade, using the word "damn," and accusing Covington of picking on Stan and her. Stan, meanwhile, also said something to Covington indicating that he considered Covington to be being unfair. In the course of saying so, Stan used the word "shit."

Covington asked Peggy and Stan to accompany her to the "shift office"—an office used by several low level supervisors, including Covington and Hughes—so that Peggy and Stan could talk to Hughes. Peggy said that they would not, that she did not want to talk to "no God damn Mike Hughes."

Covington turned and headed for the shift office. As she did, Peggy turned to another employee and loudly referred to Covington as "that bitch." Covington overheard the remark. She was already upset by the outburst from two employees with whom she considered herself to be on good terms. Covington got more upset.

At this point it is worth discussing the kinds of cursing generally heard at Phillips' Seneca plant. "Damn" is considered "foul language" (as one employee witness put it). "Hell" and "shit" are deemed significant expletives.⁶ "God damn" and "bitch" are heard relatively rarely, particularly face-to-face with a supervisor.

⁶When witnesses called by the General Counsel were asked to give examples of cursing in the plant, they mentioned the following: "How's this damn thing running today?" "Where the hell have you been?" "Hang the damn thing up." And, "I'll write your ass up."

In the office Covington reported to Hughes that Peggy had again requested vacation time, that Covington had said no, and that Peggy and Stan had become loud and abusive and had used profanity. When she told Peggy and Stan to go to the office, Covington continued, they refused. Covington specifically told Hughes that Peggy had said that she did not want to talk to "damn Mike Hughes." Hughes told Covington to return to Peggy and Stan and to order them to go to the shift office. If they refused, Hughes said, Covington should order them to punch out and leave the plant. As he said that, Hughes took out of a drawer a manual that described Phillips' vacation policy.

Covington returned to the Fare area, walked over to Peggy and Stan, and told them that Hughes had said that they should go to the office so that he and they could discuss the vacation that Peggy and Stan wanted. If they did not do that, Covington continued, Peggy and Stan had to punch out and go home. (What Covington meant was that the two employees had to talk to Hughes; if they would not obey that order, they would not be permitted to remain in the plant. While her words arguably could be construed as giving the employees the choice of two different courses of action, it is clear that both Peggy and Stan understood perfectly well what Covington meant.)

Peggy again said that she did not want to talk to "no God damn Mike Hughes." Either Peggy or Stan said that they wanted to talk to Bud Chittenden or Archie Barron. (Chittenden is the plant's operations superintendent. Barron is the administrative services superintendent.) Covington said they could not, that they had to talk to Hughes.

At that point Peggy and Stan began to gather up their personal things. Peggy shouted some words that included: "I'm for the union." (Peggy probably said something like, "why are you doing this? Because I'm for the union?"—with the emphasis on "I'm for the union." In any case, Covington heard only, "I'm for the union.") Covington yelled back, "I don't give a damn."

Stan then yelled to a fellow employee, "you can have all this damn shit," referring to the items in his locker. And he and Peggy left the plant.

Covington returned to the shift office and told Hughes what had just happened. (As Covington related Peggy's last words to Hughes, Peggy had shouted, "don't you know I'm for the union, don't you know I've signed a union card.") Hughes, in turn, called Administrative Services Superintendent Archie Barron (at Barron's home) and described the incident to him.

In the days that followed, Barron, sometimes accompanied by another senior plant official, interviewed Peggy, Stan, Covington, Hughes, and the three employees who were within earshot of the exchanges between Covington, Peggy, and Stan. One of the employees, Gary Kokay, told Barron that he supported having a union in the plant and that charges would be filed against Phillips.

Barron concluded that Peggy's and Stan's insubordination, exacerbated by what he considered the abusive and profane language they directed at Covington, warranted their discharge. Accordingly, on July 10 Barron again met with Peggy and Stan and told them that they were being fired. In telling them the reasons for their discharges, Barron used the words of the plant's "Rules for Personal Conduct." Thus, he told them that they were being fired for: (1) insubordination;

(2) refusal to obey orders; and (3) conduct violating decency and morality.⁷

When Phillips discharges an employee, the employee's first-line supervisor is asked for a recommendation about whether Phillips should consider the employee eligible for rehire in the future. The supervisor's recommendation is noted in the employee's personnel record. Peggy's and Stan's records show that Covington recommended that Peggy and Stan be eligible for rehire.

Several related matters merit consideration in relation to Phillips' discharge of Peggy and Stan.

One has to do with Peggy's and Stan's records at Phillips. Neither was a model employee. But both were good workers who had been with Phillips for a long time. Peggy had worked for Phillips since 1976, Stan since 1979.

Another has to do with Phillips' disciplinary practices. Phillips uses a progressive disciplinary system (reprimand, warnings of various sorts, and discharge). Discharges for a single offense are relatively rare and generally are the result of exceedingly serious violations of plant rules, violations more serious than those committed by Peggy and Stan.

Third, when Phillips fired Peggy and Stan, its officials knew that there was some union activity in the plant and that Peggy, and probably Stan, were involved in that activity. That is because Peggy and Kokay had by then announced to Phillips supervisors that they were supporters of a union (as described above). And, as will be discussed below, on July 6 a supervisor had found a copy of the Union's constitution and a petition in the plant.

For all that, my conclusion is that the protected activities of Peggy and Stan had nothing to do with Phillips' decision to fire the two employees. First, the record here fails to establish union animus on Phillips' part. Second, Peggy and Stan refused Covington's order that they go to the shift office; then, several minutes later, they again refused the same kind of order. Peggy, moreover, couched her refusals in language that, by the standards of the plant, was utterly out of line.

Stan's language was considerably milder than Peggy's. But Peggy and Stan obviously were acting as a couple in their responses to Covington. As a result it would have been inappropriate, or at least awkward, for Phillips to have fired Peggy and not Stan.

There is one last matter to consider regarding Phillips' discharge of Peggy and Stan. Plant policy is to allow—even encourage—any employee to meet with any supervisor. In the midst of the confrontation Covington-Peggy-Stan confrontation, the two employees asked to see supervisors Barron and Chittenden. Covington told them they could not, that they had to meet with Hughes. I do not consider anything strange about Covington's refusal to honor the employees' request. To begin with, Covington knew that Barron and Chittenden almost always leave the plant long before 7 p.m. (when the

altercation occurred). Secondly, Phillips' policy does not mean that an employee is permitted to refuse an order to meet with a specified supervisor. I am clear that had Peggy and Stan complied with either of Covington's orders that they meet with Hughes: (1) they would not have been fired; and (2) they thereafter could have met with any supervisor they chose about their vacation desires or about any other subject.

Confiscation of Personal Property Relating to Union Activities

The General Counsel alleges that, on July 6, Phillips discriminatorily enforced a no-solicitation, no-distribution rule by confiscating certain personal property of employee Gary Kokay, which property related to union activities.

Much of the time the Fare operators in Phillips' plant do nothing but monitor the machines' operations. That can get boring. The operators accordingly like to read magazines and newspapers, do puzzles, and the like. But Phillips, understandably, considers that it is inappropriate for employees to read anything but work-related materials while they are supposed to be working. And the employees all know that that is Phillips' policy.

Still, the work does get boring. The result is that many employees try to sneak in some reading while they are on the job. And whenever a supervisor sees that, the employee is ordered to stop. That circumstance has been going on for years.

Phillips does permit employees to bring reading material to the plant, to keep it in their lockers or even in work areas if it remains out-of-sight, and to read it, in nonwork areas, during their breaks.

There are tables near the Fare machines. Phillips put them there for working purposes; for example, for the limited paperwork that the Fare operators have to do and as a place to change knife blades for the cutters that the Fare operators use from time to time. Phillips allows employees to keep some personal objects on the tables, such as purses, lunch bags, and coats. In keeping with the policy I have just described, however, Phillips forbids employees to keep reading materials on those tables—except, of course, reading materials pertaining to the employees' work.

On July 6 Kokay, who is a Fare operator, put a copy of the Union's constitution on one of the tables next to the Fare machines. Tucked inside the constitution was a petition that had some signatures on it. Kokay's name was not on the materials. Kokay then left the immediate area to do some repair work. While he was doing that work Hughes (the shift supervisor) came by and noticed the constitution on the table. (Hughes did recognize it to be a union constitution.) Phillips' usual policy is for all dealings directly between management and an employee to be handled by the employee's foreman. So Hughes informed Covington about the union constitution on the table and told her to "take care of it."

Covington proceeded to the table, saw the constitution, saw no employee in the immediate area, picked up the constitution (and the petition that was in it), and brought it to the shift office.

As stated earlier, when a Phillips' supervisor sees personal reading materials in an employee's possession while the employee is at work, the supervisor orders the employee to put the material away. And when a supervisor sees such material

⁷The rules state, *inter alia*:

While the following list is not all inclusive, some of the violations which can result in disciplinary action, including discharge, are:

. . . .

5. Conduct which violates common decency or morality.

. . . .

10. Insubordination; refusal to obey orders; failure to observe established procedures.

in a working area and it is not apparent to whom the material belongs, the supervisor takes the material to the shift office. Up to this point, therefore, Covington's behavior had unquestionably been precisely what it would have been had the constitution instead been *People* magazine or an Avon catalog. That is to say, up to this point Phillips had not acted at all discriminatorily in respect to Kokay's union constitution and petition.

The real issue, as I see it, is whether Phillips, at this juncture, began to treat the union constitution and materials differently from the way it would have dealt with other kinds of reading materials it obtained under similar circumstances; and, if Phillips did, whether the difference was of such a nature that Phillips should be found to have violated the Act.

There are two factual subissues in this respect. The first is, what does Phillips usually do when a supervisor picks up reading materials? The second is, what did Phillips do in the case at hand? The evidence is scanty in respect to both subissues.

As far as what happened here, all that the record tells us with any certainty is that Covington gave the union constitution and petition to Hughes. Hughes, in turn, gave them to his supervisor.

In the meantime—about an hour after Covington picked up the constitution and petition—Kokay paged Covington. When she answered the page he said something like, "I believe that you took something of mine by accident." Covington replied that she didn't take it by accident, that it "was laying out open in the work area on work time," and that the materials had been "disposed of."

About a month later Phillips' plant manager, George Strobeck, gave a speech to employees about the unionization effort. In the course of that speech he read from one of the Union's petitions, saying "this is one of the petitions that the union people are trying to get you to sign."⁸ Kokay, who was one of the employees to whom the Strobeck was talking, concluded that the petition that Strobeck was displaying was the one that Covington had taken on July 6.

Phillips did not introduce any evidence about whether or not Kokay's assumption was accurate.

As to what Phillips usually does with reading material taken from employees, one employee testified that he thought that the supervisors "throw it in the trash can." Shift Supervisor Hughes testified:

Generally . . . if we know who the material belongs to, we will handle it as a verbal reprimand, have them put it away, take care of it themselves. If they don't want to do that, we will do it for them. We will take it and dispose of it. If we don't know who it belongs to and it is just laying out, we will take it up and dispose of it.

To me, what that adds up to is this: If Kokay's constitution and petition had instead been a magazine, say, Covington would have either thrown it away or, when Kokay asked for its return, would have given it back to him with the admonition that he should not have such material in a working area and that he must immediately put it away. Phillips did not follow that procedure in respect to the union constitution and petition. (That is the case whether or not one

assumes that the petition that Strobeck read from was the one that Covington took from Kokay.) I have no doubt that the reason that Phillips treated those materials differently was because they were union-related.

I conclude that, while the issue is a close one, Phillips' treatment of Kokay's union constitution and petition after they were taken from him amounts to a violation of Section 8(a)(1).

Phillips' behavior hardly can be classified as heinous. Still, union organizing materials are central to the concerted activity that Section 7 protects. Employer actions directed at such materials thus all too easily may interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. Accordingly, if an employer acts in some way toward to such materials, that action must closely follow the procedures the employer would follow regarding other kinds of written material belonging to employees. Phillips here easily could have done that; most obviously by returning the materials to Kokay. Yet Phillips inexplicably failed to do so.

I have considered whether this violation of the Act proves union animus on Phillips' part. I have concluded that it does not. What the violation does show is that: (1) Phillips' behavior was thoughtless; and (2) Phillips' management found a union constitution and a union petition to be considerably more interesting than the materials employees usually bring in—newspapers, cosmetics, catalogs, and the like. And that, it seems to me, is all that the violation shows.

Stan P. Smith's July 7 Conversation With Covington

Employee Stan P. Smith spent a busy day on July 7 taking notes, notwithstanding the fact that his job does not include any paperwork. (The employee who was involved in the July 3 altercation with Covington was Stan D. Smith. Employee Stan P. Smith is a different person. The two Stan Smiths are not related.) Stan P. Smith's foreman, Covington, appropriately told Smith to stop doing that on company time.

In any case, the General Counsel does not contend that that conversation violated the Act. Rather, the claim is that on July 7 Covington told Smith that he was not permitted to bring any reading material to the plant. Smith did so testify. And had Covington said that, that would have plainly been out of line with Phillips' past policy regarding reading material. (As touched on earlier, Phillips' employees are permitted to bring reading material to the plant. The only restriction is that they may neither read while working nor have the material in sight in working areas.)

But Smith was the only witness to testify about that incident. And I found Smith not to be credible as a witness. (I rarely discredit all of a witness's testimony. Even with witnesses I have doubts about, I generally find some of the witness' testimony to be credible, some to be otherwise. But in Smith's case, I am unwilling to credit any of his testimony.)

I accordingly find that the record fails to sustain the allegation concerning Covington's July 7 statement to Smith, and I will therefore recommend that this allegation be dismissed.

The Rule Against Making Telephone Calls

The allegation is that in mid-July Covington promulgated a rule requiring the employees whom she supervised to obtain her approval before they used the telephone during

⁸That is all the record tells us about this Strobeck speech.

working time, and that she did so because of the union organizing efforts of some of the employees.

Everyone agrees that the employees could use the telephone as much as they liked when they were on their breaks. And it is clear that in mid-July Covington told some prounion employees to stop using the telephone when they were supposed to be working, unless they got her prior approval. (Covington asked employees Gloria Cleveland and Gary Kokay to "do me a favor" and do their telephoning on their breaktimes rather than during their worktimes.) Additionally, at a regular monthly meeting of rework employees, in either July or August, Covington told the employees that they were only to use the telephone on breaks unless it was an emergency situation. (Covington at no time used the word "union" or in any other way alluded to protected employee activities either in her remarks to Cleveland and Kokay or at the meeting with employees.)

The question is whether Covington made those remarks because of the employees' protected activity.

I find that she did not, that her statements about telephone use had nothing whatever to do with any protected activity.

To begin with, I find that at all relevant times it was Phillips' policy that employees were not to leave their work stations to make personal telephone calls except with the specific permission of their foreman, and that all Phillips employees knew that to be the case. I further find that, year-in-year-out, Phillips' foremen occasionally discussed that policy with employees in their regular monthly meetings. I further find that while Phillips' foremen did not always enforce the telephone policy rigorously, they did crack down whenever they believed that employees were abusing that leniency. Lastly, I find that in mid-July Covington did notice that the number of telephone calls being made by employees during work time was increasing, and that it was this increased use of the telephone during work time that led to Covington's remarks.

I will thus recommend that this allegation of the complaint be dismissed.

Covington's Remarks to Stan P. Smith in Mid-August

Stan P. Smith testified that on August 19 Covington told him that he was not to stop and visit other employees on his way to break areas. The General Counsel alleges that Covington made that remark because of Smith's union activities.

Covington testified that no such incident occurred. I credit Covington and will recommend dismissal of this allegation.

Covington's Remarks to Stan P. Smith in September

The Fare machinery is many yards long. At one place all the machinery is far enough above the floor that it is possible to walk under it, albeit stooped. There is some danger involved, and Phillips' policy is that no one is supposed to do that. Accordingly, Phillips has roped the area off. Nonetheless employees, and supervisors, sometimes do walk under the Fare machinery as a shortcut. Mostly, however, everyone follows established routes.

Sometime in September Stan P. Smith, as he was going on his break, walked under the Fare machinery (even though that was not a shortcut to the break area), then stopped and visited for several minutes with two Fare operators, both of whom were supposed to be at work. Covington saw all this, waited until Smith was alone, then talked to him about his

behavior. Covington told Smith that when he went on his breaks he should proceed directly to the break area (i.e., not under the Fare machinery), and that he was not to visit Fare operators while they were supposed to be working.

The General Counsel contends that Covington would not have spoken those words to Smith but for Smith's union activities. But my conclusion is that Covington's utterance was a routine one, one predicated entirely on considerations of plant efficiency and safety and with no connection to Smith's union activities or with any other protected activities. Accordingly, once again, I shall recommend dismissal of the allegation.

CONCLUSIONS OF LAW

1. Phillips is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Phillips violated Section 8(a)(1) of the Act by treating materials relating to a union organizing effort taken from employee Gary Kokay differently from the way Phillips would have dealt with materials unrelated to union organizing.

4. The evidence fails to show that Phillips otherwise violated the Act in any respect.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, Phillips Fibers Corporation, Seneca, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Treating materials relating to a union organizing effort taken from employees differently from the way the Respondent deals with materials unrelated to union organizing.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facility in Seneca, South Carolina, copies of the attached notice marked "Appendix."¹⁰ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

⁹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁰If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT treat union organizing materials taken from employees differently from the way we treat materials unrelated to union organizing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

PHILLIPS FIBERS CORPORATION